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BEFORE THE HON'BLE HIGH COURT OF JUDICATURE AT BILASPUR
(CHHATTISGARH)

CRIMINAL APPEAL. 532/2003

APPELLANTS

: Baishakhu, S/o. Dhund^{Ar}usidar
R/o. Sahedeopali,
Tahsil & Dist-Raigarh (CG)

VERSUS

RESPONDENT

: State of Chhattisgarh
Through D.M. Raigarh

APPEAL U/S 374 (2) CRIMINAL PROCEDURE

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.532/2003

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Baishakhu

Versus

State of Chhattisgarh

Post for Order 3.5.06

Sd-/
Dilip Raosaheb Deshmukh
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No. 532/2003

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Baishakhu

Versus,

State of Chhattisgarh

Present:-

Shri Amit Sharma, learned Counsel for the appellant.

Shri Ashish Shukla, Govt. Advocate for the State.

Appellant Baishakhu is also present in person.

JUDGMENT

(Delivered on 3rd of May-2006)

Being aggrieved by his conviction under Section-325 & Section-323 of IPC and the sentence of rigorous imprisonment for 2 years and a fine of Rs.300/- awarded under Section-325 of IPC and sentence of rigorous imprisonment for 6 months awarded under Section-323 of IPC by the Ist Additional Sessions Judge, Raigarh in Sessions Case Number-88/2002 vide judgment dated 03-04-2003, Appellant Baishakhu has preferred this appeal.

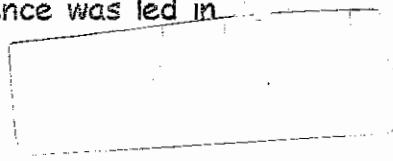
2. Briefly stated the factual matrix is that on 13-01-2002 at 07.30 P.M., appellant Baishakhu went to the house of Sukhdeo and asked for a *Chilam*. On being asked by Sukhdeo to go to hotel of Rajnath Patel for the said purpose, the appellant insisted that Sukhdeo should accompany him. While going to the hotel of Rajnath Patel, a quarrel ensued between the appellant and Sukhdeo. The appellant dealt a fist blow below the left eye of Sukhdeo. Upon hearing shouts of Sukhdeo, his younger brother Bhagat came out from his house. Meanwhile, co-accused Radhe Das & Madan Das also

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arrived there. It is alleged that the appellant Baishakhu brought a tangia from the hotel of one Madan and assaulted Sukhdeo and Bhagat with the said tangia on the head. Shatrughan PW-6 intervened.

3. F.I.R. was lodged by Sukhdeo on the next day i.e. 14-01-2002 at 2.20 P.M. Both Sukhdeo & Bhagat were sent for medical examination. Upon medical examination of Bhagat, Dr. P.K.Patel found a lacerated wound size $2 \frac{1}{2}$ " x $\frac{1}{2}$ " x bone deep with bleeding on the right side of the frontal region. X-Ray was advised. It was opined that the injury was caused by a hard and blunt object. On medical examination of Sukhdeo, Dr. P.K.Patel found a lacerated wound at the right parietal region of scalp size $2 \frac{1}{2}$ " x $\frac{1}{2}$ " x Skin deep with bleeding and one contusion on the left molar prominence $\frac{1}{2}$ " in diameter, reddish in colour. X-Ray was advised. Dr. Iqbal Singh PW-2 conducted the radiological examination and found vide Ex.P-6 that no bony injury was sustained by Sukhdeo. However, he found fracture of frontal bone of Bhagat. One iron tangia was recovered at the instance of appellant Baishakhu vide seizure memo Ex.P-16. One iron rod was seized at the instance of co-accused Radhe Das vide seizure memo Ex.P-18. One sword was recovered at the instance of co-accused Madan Das vide Ex.P-14. The aforesaid articles were sent for analysis to the Forensic Science Laboratory which confirmed presence of blood on all the articles. After completion of investigation, the appellant Baishakhu & co-accused Radhe Das and Madan Das were prosecuted under Section-307 of IPC.

4. A charge under Section-307 read with Section-34 of IPC was framed against the appellant Baishakhu and other two co-accused namely Radhe Das and Madan Das. The appellant abjured the guilt and pleaded innocence and false implication. No evidence was led in



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defence. The prosecution examined as many as 8 witnesses. Considering the evidence led by the prosecution and the fact that the appellants Radhe Das and Madan Das were not named in the Dehati Nalishi lodged by Sukhdeo, the learned trial Judge acquitted the co-accused Radhe Das and Madan Das. However, the learned trial Judge convicted the appellant Baishakhu under Section-325 of IPC for voluntarily causing grievous hurt to Bhagat and under Section-323 of IPC for voluntarily causing simple hurt to Sukhdeo and awarded sentence as mentioned in para-1. (Supra)

5. Shri Amit Sharma, learned counsel appearing on behalf of the appellant has assailed the conviction of the appellant Baishakhu as aforesaid on the ground that the evidence led by the prosecution does not establish the guilt of the appellant Baishakhu under Section-325 & Section-323 of IPC, since evidence did not show beyond doubt that the appellant Baishakhu had inflicted injuries on the head of Sukhdeo and Bhagat with a hard and blunt object. It was also argued that Bhagat PW-5 had in para-8 of his testimony clearly admitted that he had not seen the appellant assaulting him by means of a tangia. The testimony of Sukhdeo in para-2 was also referred to show that Radhe Das and Madan Das who were accompanying the appellant had assaulted Bhagat at the first instance. Considering the fact that Bhagat had sustained only one injury i.e one lacerated wound on the frontal region $2 \frac{1}{2}'' \times \frac{1}{2}''$ x bone deep, the possibility that it was inflicted by either of the co-accused Radhe Das and Madan Das could not be ruled out. There was nothing to demonstrate that the appellant was acting in concert with Radhe Das and Madan Das. It was also argued that the testimony of Sukhdeo was highly exaggerated since he had alleged in para-2 that the appellant Baishakhu had assaulted 7 times by a tangia on his head. This was not corroborated by medical evidence since only one lacerated wound

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2 $\frac{1}{2}$ " x 1/2" x skin deep in the right parietal region of scalp caused by a hard and blunt object was found on him. In this manner, the testimony that the appellant had assaulted Sukhdeo and Bhagat by a tangia was not trustworthy. It was also argued that F.I.R. of the incident was lodged after considerable delay i.e. on 14-01-2002 at 2.20 P.M. at the Police Station-Kotwali, Raigarh which was situated only 4 K.M. away from the place of occurrence. Lastly, it was contended that Shatrughan PW-6 who was an independent witness of the occurrence did not support the prosecution story. On these premises, it was urged that the conviction and sentence awarded by the learned trial Judge was liable to be set aside. On the other hand, Shri Ashish Shukla, learned Govt. Advocate argued in support of the impugned judgment.

6. Having considered rival contentions, I have perused the record. The testimony of Dr.P.K.Patel PW-1 shows that Sukhdeo had sustained one lacerated wound at the right parietal region of scalp size 2 $\frac{1}{2}$ " x $\frac{1}{2}$ " x Skin deep with bleeding and in the opinion of Dr. Patel, it could be caused by a hard and blunt object. Similarly, the injury sustained by Bhagat is also shown to be one lacerated wound on the frontal region 2 $\frac{1}{2}$ " x $\frac{1}{2}$ " x bone deep and it was opined that the injury could have been caused by a hard and blunt object. It is thus clear that both Bhagat & Sukhdeo did not sustain any injury by a sharp weapon. As alleged by the prosecution, co-accused Madan Das was carrying a sword which was seized at his instance vide seizure memo Ex.P-14 and one iron rod was also seized at the instance of another co-accused Radhe Das vide seizure memo Ex.P-18. In the report of Forensic Science Laboratory, presence of blood was confirmed on both the aforesaid articles. The testimony of Bhagat PW-5 in para-8 shows in unmistakable term that he did not see appellant Baishakhu assaulting him by means of a tangia since he

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(34)
(37)

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had become unconscious. In para-2, he has deposed that the appellant Baishakhu had assaulted him with a Sabbal (an iron rod used for the purpose of digging). This testimony is contradicted by Sukhdeo PW-4 who has stated that Bhagat had sustained injury due to assault by a sword and tangia. In para-2 of his testimony Sukhdeo PW-4 has stated that on arrival of Bhagat, the companions of appellant Baishakhu had assaulted Bhagat. The testimony of Bhagat PW-5 in para-2 that appellant Baishakhu assaulted thrice with a tangia on his head is wholly unreliable, since no such injuries which could have been inflicted by a sharp object were found on his head. There was only one lacerated wound caused by a hard and blunt object as mentioned above. His testimony that the appellant Baishakhu assaulted him by a tangia on the head and thereafter on the temple region and lastly over the left ear, is thus rendered wholly unreliable. Similarly, the testimony of Sukhdeo PW-4 in para-2 that the appellant Baishakhu assaulted 7 times on his head by a tangia is rendered unreliable since no such injuries were found by Dr. P.K.Patel PW-1 on his head. There was only one lacerated wound caused by a hard and blunt object. In view of the acquittal of co-accused Radhe Das and Madan Das by the learned trial Judge, the fact that the State has not preferred any appeal against the said acquittal and also the fact that both Radhe Das and Madan Das were not named in the Dehati Nalishi lodged by Sukhdeo and in view of the facts and circumstances mentioned above, it is difficult to comprehend in this appeal that the appellant was acting in concert with Radhe Das and Madan Das and, therefore, could be convicted under Section-325 & Section-323 of IPC with the aid of Section-34 of I.P.C.

7. So far as the testimony of Sukhdeo PW-4 that while accompanying Baishakhu to the hotel of Rajnath Singh, a quarrel had

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ensued in which Baishakhu had dealt a fist blow on his right eye is concerned, it is corroborated by the testimony of Dr. P.K. Patel PW-1 who had found a red contusion on the left molar prominence $\frac{1}{2}$ " in diameter on Sukhdeo PW-4. His testimony that appellant Baishakhu came to his house for asking *Chilam* and upon his refusal asked him to accompany to the hotel of Rajnath and upon some discussion, a quarrel ensued on way in which he was given a fist blow by appellant Baishakhu is wholly un rebutted in cross-examination. It is settled law that merely because the testimony of a witness is exaggerated on some counts it cannot be brushed aside as wholly unreliable. The maximum falsus in uno falsus in omni bus has long open exploded as a myth. Although, the testimony of Dr. Iqbal Singh PW-2 establishes that Bhagat had sustained grievous injury, in the abovementioned facts and circumstance it cannot be ruled out that the appellant was not the author of the injuries sustained by Sukhdeo and Bhagat on the head since no injury caused by a sharp object like tangia was found on both.

8. In the facts and circumstances of the case mentioned above, the prosecution has failed to bring home the guilt of the appellant under Section-325 of IPC for voluntarily causing grievous hurt to Bhagat by means of a tangia. However, it is established by the evidence led by the prosecution that the appellant Baishakhu had dealt a fist blow to Sukhdeo causing simple injury on the left molar prominence. In view of the highly exaggerated testimony of Sukhdeo, the material contradictions in the statements of Sukhdeo PW-4 and Bhagat PW-5, the fact that independent witness Shatrughan PW-6 did not support the prosecution story and the possibility that the injury sustained by Sukhdeo and Bhagat could not have been caused by the appellant by means of a tangia, I am of the considered opinion that the conviction of the appellant under

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Section-325 of IPC for voluntarily causing grievous hurt to Bhagat deserves to be set aside.

9. In the result, the appeal is partly allowed. Conviction of the appellant Baishakhu under Section-323 of IPC for voluntarily causing simple hurt to Sukhdeo is maintained. Conviction of the appellant under Section-325 of IPC for voluntarily causing grievous hurt to Bhagat and the sentence awarded thereunder are set aside. So far as the sentence awarded to the appellant for the offences under Section-323 of IPC is concerned, in view of the fact that the appellant has suffered incarceration from 15-01-2002 to 23-01-2002 for 9 days during trial and thereafter from 30-03-2006 to 28-04-2006 i.e. 30 days during this appeal, I am of the considered opinion that ends of justice would be met, if the appellant Baishakhu is sentenced to imprisonment already undergone by him and to pay a fine of Rs.3,000/- and in default of payment of fine to undergo additional simple imprisonment for a period of 3 months. Ordered accordingly. Rs.3000/- shall be paid to Sukhdeo as compensation.

Sd-/
Dilip Raosaheb Deshmukh
Judge

Sumant